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Attorneys for Defendant Member Source Media, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**ASIS INTERNET SERVICES**, a California  
corporation,

Plaintiff,

vs.

**MEMBER SOURCE MEDIA, LLC, et al.,**

Defendants.

CASE NO. CV-08-1321-EMC

**DECLARATION OF CHRIS SOMMER  
IN SUPPORT OF DEFENDANT  
MEMBER SOURCE MEDIA, LLC'S  
MOTION TO STAY CASE**

Date of Hearing: August 27, 2008  
Time of Hearing: 10:30 a.m.  
Location: Courtroom C

I, Chris Sommer, declare as follows:

1. I am the founder and Chief Executive Officer of Defendant Member Source Media, LLC ("Member Source"). Unless otherwise stated, I have personal knowledge of the facts stated herein.

2. Member Source is an Internet marketing company, which assists clients such as Blockbuster, Discover Card, and Columbia House in the online promotion of their goods and services.

1           3. These advertisements are delivered to consumers through the use of  
2 banner ads, incentive offers, and lawful email advertisements.

3           4. Member Source does not send the vast majority of the emails promoting  
4 its clients' goods and services. Rather, Member Source enters into arms length  
5 contracts with affiliate networks to send out these emails, providing the networks with  
6 the creative material to be included in the emails. In turn, these affiliate networks may  
7 contracts with third parties to send out emails on their behalf.

8           5. Member Source has undertaken an analysis of the 5,000 emails at issue  
9 in this case. Member Source developers programmed computer scripts to collect and  
10 cross-reference several factors about the emails against Member Source's daily media  
11 reports, including the dates and times the emails were sent and received, the nature of  
12 the emails' subject lines, and the offers promoted in the emails. Through this analysis  
13 Member Source has determined that the majority of the 5,000 emails were sent by just  
14 three publishers by way of one affiliate network of Member Source.

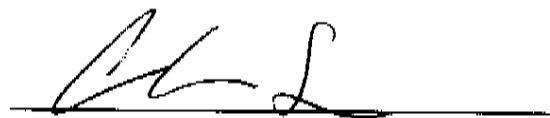
15           6. Consistent with our understanding of federal civil procedure, Member  
16 Source has and will continue to preserve all potentially relevant documents relating to  
17 the 5,000 emails at issue, the publishers of those emails, and the affiliate network that  
18 coordinated with the relevant publishers. If the Court agrees to stay this case, during  
19 the stay Member Source will respond to all relevant discovery concerning the 5,000  
20 emails at issue, including discovery concerning the publishers of those emails and the  
21 affiliate network. Moreover, Member Source will not object to or otherwise oppose valid  
22 third party discovery by ASIS of documents relevant to the 5,000 emails or the  
23 publishers of those emails or the relevant affiliate network.

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1 I declare under penalty of perjury of the laws of the United States that the  
2 foregoing is true and correct and that this Declaration was executed on August 12 2008,  
3 at San Francisco, California.  
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